

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

FILED
2014 JUL 16 A 9:58

PROGRESSIVE NORTHERN
INSURANCE COMPANY,

Plaintiff

v.

MARCY H. COHEN, RICHARD A. COHEN,
HERBERT J. PETERS, AND
BAY MARITIME SERVICES LLC

Defendants

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

C.A. No.:

CA 14 - 326 ML

PLAINTIFF, PROGRESSIVE NORTHERN INSURANCE COMPANY'S
COMPLAINT FOR DECLARATORY RELIEF

1. The plaintiff, Progressive Northern Insurance Company ("Progressive"), is a foreign corporation authorized to do business in the State of Rhode Island.
2. The defendant, Marcy H. Cohen ("Marcy") is a resident of Cranston, Rhode Island.
3. The defendant, Richard A. Cohen ("Richard"), is a resident of Cranston, Rhode Island.
4. The defendant, Herbert J. Peters a/k/a Benny Peters ("Peters"), is a resident of Uxbridge, Massachusetts.
5. The defendant, Bay Maritime Services, LLC ("Bay Maritime"), is a Massachusetts Domestic Limited Liability Company.
6. The instant action arises out of a maritime tort claim that occurred on June 4, 2011 at the Apponaug Harbor Marina ("the Apponaug Harbor"). The subject vessel was a 37 foot Four Winns Cruiser, R.I. Registration 1619W, Hull Identification Number GFNCZ007G607 ("the Boat") and was owned by Richard and his wife, Marcy (collectively, "the Cohens").
7. On or about June 4, 2011, Bay Maritime was the owner of a marine training, charter and maintenance service of which Peters was an agent and/or employee.
8. On or about June 4, 2011, Marcy was a passenger on the Boat operated by Peters and/or Richard when the Boat collided with another boat at the Apponaug Harbor, causing bodily injuries to Marcy ("the Incident").

9. Following the Incident, Marcy instituted an action in Kent County Superior Court for the State of Rhode Island, C.A. No. KC-2013-1274, against Peters and Bay Maritime for her bodily injuries ("Marcy's Action") ("the Complaint") (copy attached hereto as Exhibit A), which has been removed to this Court (a copy of the Notice of Removal is attached hereto as Exhibit B).

10. The Complaint alleges claims of negligence against both Peters and Bay Maritime.

11. Shortly thereafter, Peters filed, along with his Answer (copy attached hereto as Exhibit C), a Third Party Complaint (copy attached hereto as Exhibit D) against Richard in the United States District Court for the District of Rhode Island, C.A. No. 1:14-cv-00009-ML-LDA ("Third Party Complaint").

12. The Third Party Complaint refutes the factual and defect allegations contained in the Complaint, and contends that the alleged injuries and damages suffered by the Cohens were caused or contributed to, in whole or in part, by the fault, negligence, or want of care, or breach of any legal obligation (including its duty to provide a seaworthy boat) on the part of Richard and not Peters.

13. Prior to the Incident, Progressive had issued and delivered to Richard in Rhode Island a policy of insurance for boat and personal watercraft liability coverage under Progressive Policy No. 2649 RI (05/06) ("the Policy") (a copy of this policy is attached hereto as Exhibit E). Both Richard and Marcy were listed as named insureds under the Policy.

14. The Policy issued by Progressive to Richard does not apply or cover the bodily injuries suffered by Marcy in connection with the claims raised in Marcy's Action because:

- a. the claims are specifically excluded under "Exclusion 11" of the Policy (Part 1 Liability to Others, No. 11).

"EXCLUSIONS – IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I."

"Coverage under this Part 1, including our duty to defend, does not apply to:

11. Bodily injury to you or a relative."

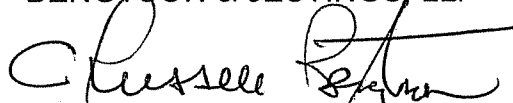
"You" is defined as: "'You' and 'your' mean: (a) a person or persons shown as a named insured on the declarations page; and (b) the spouse of a named insured if residing in the same household."

15. A dispute has arisen between Progressive and the defendants relative to their respective rights, duties, status and obligations under the Policy.

WHEREFORE, Progressive Northern Insurance Company prays that pursuant to 28 U.S.C. § 2201(a) this Court declare the rights, duties, status and obligations of the parties as follows:

- a. that an Order enter that the claims asserted in Marcy's Action against Peters and Bay Maritime are not covered under the terms and/or provisions of the Policy;
- b. that an Order enter that Progressive has no obligation to satisfy any judgment or to reimburse the Cohens for any amount paid to Marcy and/or paid by or to Richard as a result of Marcy's Action and/or Peters's Third Party Complaint against Richard;
- c. that an Order enter that Progressive has not breached its obligations to Richard A. Cohen;
- d. that an Order enter that Progressive has not acted in bad faith in its denial and refusal to pay the claims asserted under the Policy;
- e. that Progressive be awarded its attorneys fees and costs related to this action; and
- f. that such other and further relief as this Court deems proper and just be awarded.

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CERTIFICATION

I hereby certify that a true copy of the within was hand delivered to counsel of record listed below on 16th day of July, 2014.

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